

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36303/36304

STATE OF IDAHO,)	2010 Unpublished Opinion No. 343
)	
Plaintiff-Respondent,)	Filed: February 5, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSEPH RALPH THOMPSON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed; judgment of conviction and consecutive indeterminate sentence of seven years, for possession of a controlled substance, affirmed; orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

This appeal involves two cases that are consolidated for purposes of appeal. In case number 36303, Joseph Ralph Thompson was charged with domestic battery and with operating a vehicle without the owner's consent and pursuant to a plea agreement, pled guilty to domestic battery, Idaho Code § 18-918, and the state dismissed the remaining charge. Thompson was sentenced to a unified term of five years, with two years determinate, the sentence was suspended and Thompson was placed on probation for three years. Two separate probation violations were filed and the district court reinstated probation and extended the period of probation for one year. Thompson again violated the terms of his probation and the district court

revoked probation, ordered the underlying sentence into execution and retained jurisdiction. After Thompson completed his rider, the district court suspended the sentence and placed Thompson on probation for two years. Thompson violated the terms of his probation for a fourth time and the district court revoked probation, ordered the underlying sentence into execution and retained jurisdiction a second time. After Thompson completed his second rider, the district court again suspended the sentence and placed Thompson on probation for two years. A fifth probation violation was filed and prior to disposition, Thompson was charged with and pled guilty to possession of a controlled substance, methamphetamine, I.C. § 37-2732(c)(1), in case number 36304 and the state dismissed other charges. The district court revoked probation in case number 36303 and ordered the underlying sentence into execution. In case number 36304, Thompson was sentenced to an indeterminate term of seven years and the sentence was ordered to run consecutively with the sentence in case number 36303. Thompson filed Idaho Criminal Rule 35 motions for reduction of sentences in both cases, which the district court denied. Thompson appeals from the revocation of his probation in case number 36303 and from his judgment of conviction and sentence in case number 36304, contending that the district court abused its discretion by ordering execution of his sentence without reduction upon revoking his probation and by imposing excessive sentences. He also appeals from the denial of his Rule 35 motions for reduction of sentences.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. *State v. Hanington*, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009); *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. *Hanington*, at 28, 218 P.3d at 7. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." *State v. Stover*, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." *State v. Wolfe*, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). The reviewing court "will examine the entire record encompassing events before and after the original judgment," i.e., "facts existing when the sentence was imposed as well as events occurring between the original

sentencing and the revocation of probation.” *Hanington*, 148 Idaho at 28, 218 P.3d at 7. Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in failing to reduce the sentence upon revoking probation.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court’s discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant’s entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007). Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by imposing the sentence in case number 36304.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Thompson’s Rule 35 motions for reduction of sentence.

Therefore, the order revoking probation and directing execution of Thompson’s previously suspended sentence is affirmed in case number 36303. The judgment of conviction and sentence in case number 36304 are also affirmed as are the orders denying Thompson’s Rule 35 motions in both cases.